

## Distillery Free Samples

### **Distilleries Must Pay Sales or Use Tax on Free Samples Served at Their Locations**

Distilleries must pay sales or use tax on the alcohol that they serve for free as samples to visitors to the distilleries. A distillery must either:

- 1) pay sales tax to the wholesaler on its purchases of its products served as samples, or
- 2) if the wholesaler does not collect sales tax, pay use tax on the purchase price of the product that it serves as free samples.

### **The Tax Base for Free Samples Must Be at Least the Fair Market Value**

Sales and use tax law provides that a manufacturer (e.g., distillery) must pay tax on the fair market value of property that it manufactures or produces for its own use.

When a distillery buys its product back from a wholesaler to use as samples, it must pay tax on at least the fair market value of the product. If the wholesaler collects tax, but on a price that is less than the fair market value of the product, the distillery must pay tax on the difference between the price charged by the wholesaler and the fair market value.

Fair market value is at least the distiller's cost of materials, direct labor, and overhead for the product that it offers as free samples. Note, taxes and fees imposed on the manufacturer of the alcohol should be included with other overhead costs (e.g., federal and state excise taxes). However, taxes and fees imposed on wholesalers and retailers of alcoholic beverages, such as the alcoholic beverage gallonage tax, alcoholic beverage

enforcement tax, and municipal inspection fees, should not be included in the distiller's overhead costs.

### **Distilleries Are Not Required to Pay LBD Tax on Alcohol They Serve at Their Locations**

Distilleries are not required to pay liquor-by-the-drink tax on any alcohol that they serve for consumption on their premises, regardless of whether the alcohol is offered as a free sample or sold to the customer.

### **Distilleries May Pay Gallonage Tax Directly to the Department on Alcohol Offered As Samples**

Wholesalers are generally responsible for remitting the alcoholic beverage gallonage tax to the Department. A distillery may remit this tax directly to the Department for up to 100 cases of alcohol per month as needed for its own use, including samples. See [Distiller's Alcohol Beverage Tax Return](#). However, for amounts over the 100 cases, the wholesaler will be remitting the tax.

### **For More Information**

Visit [www.tn.gov/revenue](http://www.tn.gov/revenue). Click on Revenue Help to search for answers or to submit an information request to one of our agents.

### **References**

Tenn. Code Ann. § 67-6-203; Tenn. Code Ann. § 67-6-209; Tenn. Code Ann. § 57-3-202(i); Tenn. Code Ann. § 57-3-303(a); TENN. COMP. R. & REGS. 1320-05-01-.103; Public Chapter 1027 (2018)